

IN THE MATTER OF	*	BEFORE THE
WESLEY & REBECCA JENSON,	*	HOWARD COUNTY
t/a ARROWWOOD SHEPHERDS, INC.	*	BOARD OF APPEALS
Petitioners	*	Case No. BA 05-033C

DECISION AND ORDER

On June 2, 2009, the Howard County Board of Appeals convened to hear oral argument in an evidentiary hearing concerning a written request by Wesley and Rebecca Jenson, t/a Arrowwood Shepherds, Inc. (the "Petitioners") to extend the two-year time limit to obtain all building permits required to establish the conditional use approved in Howard County Board of Appeals Case No. BA 05-033C, pursuant to Section 131.I.3.c of the Howard County Zoning Regulations (the "Zoning Regulations").

All members of the Board were present at the hearing and Chairperson James Walsh presided. Barry M. Sanders, Assistant County Solicitor, served as legal advisor to the Board.

The Petitioners certified that copies of the requested time extension were sent by certified mail to adjoining property owners and persons who testified in BA 05-033C. The Board members indicated that they had viewed the subject property as required by the Zoning Regulations.

Rebecca Jenson and Wesley Jenson, the owners of the subject property, testified to the Petitioners' efforts in establishing the conditional use. Mark Shaffer, David Owens and Bonnie Becraft testified in opposition to the extension request.

Prior to the oral arguments and the introduction of any testimony or evidence, the following items were incorporated into the record by reference: the Howard County Charter, the Howard County Code, the Howard County Zoning Regulations, the Board of Appeals Decision and Order in BA 05-033C, the Department of Planning and Zoning file in BA 05-033C, and the Petition of Appeal of Wesley and Rebecca Jenson.

Based upon the oral arguments and evidence presented, and for the reasons stated below, the Board determined to grant the request for extension.

PRELIMINARY MATTER

As a preliminary matter, the Petitioners withdrew their request for modification of the original Decision in Order in the above captioned case.¹

FINDINGS OF FACT

1. The Petitioners, Wesley and Rebecca Jenson, are the owners of the subject property, known as 3101 Florence Road, which is located in the 4th Election District on the northeast side of Florence Road, about 200 feet south of Jennings Chapel Road, in Woodbine (the "Property"). The Property is referenced on Tax Map 13, Block 9, as Parcel 137.

2. On January 17, 2007, the Howard County Board of Appeals issued a Decision and Order in Case No. 05-033C granting the Petitioners a conditional use for a dog kennel and pet grooming establishment in an RC-DEO (Rural Conservation – Density Exchange Option) Zoning District.

3. Prior to January 17, 2009, and in accordance with Section 131.I.3 of the Howard County Zoning Regulations, the Petitioners requested an extension of the time allowed to

¹ The Board notes that a Petition to Modify Conditions of Approval to the Howard County Hearing Authority pursuant to Section 131.H.4 was not properly filed.

obtain a building permit and substantially complete all required improvements, which were approved as part of the conditional use approval.

4. The Extension Request Letter listed the following reasons for granting an extension:

a. The Petitioners expected to obtain a business loan for all costs associated with the construction of the kennel and related modifications to the property (clearing of property, building of road and parking, perimeter fencing).

b. The Petitioners were unsuccessful in obtaining such a loan from the Small Business Administration and several banking institutions.

c. As a result, the Petitioners had to piecemeal the construction according to personal finances: arranged for property clearing; gravel for the footprint of building (kennel); gravel parking area; built a 6-foot property fence on front left side of the training area.

d. Due to the pervasive downturn in the economy, any business that involves so called "discretionary spending is being carefully scrutinized by lenders and they are extremely reluctant to favorably approve extension of credit for discretionary business plans."

e. At the present time, the Petitioners are preparing the site development plan for submission. Planning and Zoning informed the Petitioners that the estimated time to get through a site development plan could take up to a year.

f. With limited resources, the Petitioners have been investigating alternative structures for the kennel, i.e., pre-constructed mini-barns, steel building kits, office trailers, mobile homes and relocating the detached garage.

5. Rebecca Jenson testified and stated that she and her husband were having difficulty securing financial support for their endeavor; however, she currently has a financial backer to assist her and her husband with their conditional use plan. Ms. Jenson submitted a boundary and location drawing survey and a letter from Bruce Burton, Vice President of LDE, Inc., an engineering firm, advising the Director of the Department of Planning and Zoning that his firm has been retained to assist the Jensons in preparing the required documents for obtaining Site Plan and Building Permit approvals. Ms. Jenson also submitted aerial photos of the subject property evidencing the clearing of trees and vegetation that took place on the subject property in April of 2007.

6. Wesley Jenson testified and stated that he has encountered financial difficulties in establishing the proposed use. Due to the weak economy, he has struggled to complete the use as proposed within the 2-year time frame. Mr. Jenson confirmed that numerous attempts were made without any success in obtaining loans from various banks. Recently, Mr. Jenson stated that he has received financial backing for his conditional use from a private investor.

7. Mark Shaffer testified in opposition to the extension request and stated that the Petitioners should have never been granted a conditional use in the first place without the financial resources to accomplish their plans. Mr. Shaffer takes exception to the Petitioners conditional use operation as affecting his quality of life.

8. David Owens testified in opposition to the extension request and stated that the Petitioners have not been diligent in pursuit of their conditional use. Mr. Owens submitted photographs of activities taking place on the subject property in an attempt to demonstrate that the Petitioners are violating various conditions of approval set forth in the original

Decision and Order². Mr. Owens objected to the Board's previous conditional use approval to the Petitioners.

9. Bonny Becraft testified in opposition to the extension request and stated that she objects to the dogs on the Petitioners' property because they disrupt the movement of cattle on her farm.

DISCUSSION

Based upon the oral arguments and evidence presented, the Board concludes that the Petitioners have been reasonably diligent in pursuing their conditional use plan when seeking to obtain financial support for their conditional use. A "down-turn" in the economy was clearly a factor in hindering the Petitioners' progress to comply within the 2-year time frame of the original Decision and Order. The Petitioners have also hired an engineering firm to assist them with the establishment of their conditional use. Considering all such efforts, the Board finds that the Petitioners have been diligent in their pursuit of establishing their approved conditional use plan.

ORDER

Based upon the foregoing, it is this 17th day of August, 2009, by the Howard County Board of Appeals, **ORDERED**,

That the extension request of Wesley and Rebecca Jenson, t/a Arrowwood Shepherds, Inc. (the "Petitioners"), in BA Case No. 05-033C, is hereby **GRANTED** and that the two (2) year time-period for obtaining a building permit and the three (3) year time-period for substantial completion of construction of the conditional use, as required by

² It would be an improper exercise of the Board's function to transform the extension request proceeding into a violation and enforcement process.


Section 131.I.3. of the Howard County Zoning Regulations be, and the same is hereby
EXTENDED until January 17, 2012 and January 17, 2013, respectively.

ATTEST:



Ann Nicholson, Secretary

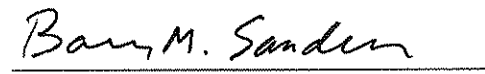
HOWARD COUNTY BOARD OF APPEALS

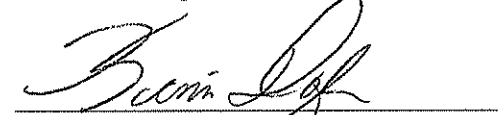

James Walsh, Chairperson

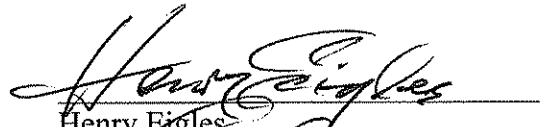

Albert Hayes, Vice Chairperson

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